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File No. L R-C. Bom II
Legal Deptt 43

B **BRANCH**

Subject:—

Rules and Notification under the Bombay Land Revenue Code 1879

(B 7/E)

File No. L·R-C. Bom II/43

Gen. 194 e.

228 B

Office of the R.L.A.

The draft notification at page 101 ante as slightly amended is in order. There is no objection to describing the lands as proposed in the draft notification providdd that they ~~if~~ can be sufficiently identified

The Settlement Report must have already been published by the Collector under section 117-J(1) of the Land Revenue Code. It now appears that Government propose to publish what orders Government have passed on the report by a notice in Form-A-11 under rule 190 of the Land Revenue Rules for the purposes of section 117-O of the Codeo In para.8 of his note at page 93, Secretary R.D. contemplates a further publication of the the Settlement Report together with other papers, but it is not clear whether this further publication is meant to be statutory, and if so under what provision of the law of the publication is non-statutory, it is entirely for R.D. to decide what meterial should be included therein.

Id/- P.N.M.
dt/- 28/6/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4569 , dated the 30th June 1943.

VVK. 17/7/56/.

5C

Office of the R.L.A.

The draft notification at page 23, as amended, is in order. As the notification will be issued in pursuance of Government Resolution Home Department, No- 5940/3-II , dated 1st April 1937 and not under section 133 of the Bombay Land Revenue Code, 1879, for the word "under" in para 2 of the Government Resolution proposed by Revenue Department at page 21, the words for the purposes of " should be substituted.

2. For the purpose delegating to the Survey Settlement Officers the powers under the Bombay Land Revenue Code, 1879 , on the lines of the orders contained in Government Resolution, Revenue Department , No. 6202/28, dated 27th August 1934 it will be necessary to issue a notification under section 19 read with section 20 of the Bombay Land Revenue Code, 1879. The requisite draft notification is sent herewith. As conferment of power under section 152 of the Land Revenue Code is to be made by the Commissioner (withprevious Government sanction), reference to the said section has been deleted. The sanction of Government required thereunder, should be given by the Revenue Department separately and the Commissioner asked to make the conferment as was done in para. 3 of Government Resolution, Revenue Department , No. 6202/28 , dated the 27th August 1934.

Id/- P.M.M.
dt/- 30/7/

Remembrancer of Legal Affairs.

VK. 17/7/56/ U.R. to R.D. No. 5229 , dated the 2nd August 1943.

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Office of the R.L.A.

The proposal is to provide that where the revised assessment on a survey number or a sub-division of a survey number exceeds the current settlement by more than 25 per cent, (i.e. in cases under section 117F (4) of the Bombay Land Revenue Code, 1879 ,or in cases of lands excluded from the operation of that section under sub-section (5) thereof), the increase in the revised assessment shall be recovered by stages of 25 per cent. every two year. Regarded as a rule regulating assesment under section 214(2)(b), the proposal would clearly be ultra vires section 117-O read with its two provisos. But the rule is intended to be relatable to Chapter XI as a recovery rule rather than to Chapter VIII-A , and is free from legal objection- The power to remit any part of the land revenue leviable, or in other words the power to recover less than the land revenue leviable , is inherent in the person entitled to recover . In respect of the revenue recoverable by it, Government may set limits to its powers of recovery by making a statutory rule under section 214(2(b) , being a rule relatable to Chapter XI of the Code. The proposed rule would therefore be valid as regulating the recovery of land revenue, leviably in accordance with a revision with settlement introduced under section 117-O.

2. As the proposal is that every two years the increase of 25 percent - of the revised assessment and no more shall be permitted to be recovered, the specific instances of 25,50 and 65 per cent. of the increase being remitted are only be way of illustration and not exhaustive. Furthermore, as the only provision required to be made is as to the graduated scale of the recovery of the increase in the assessemnt , it is not necessary to provide as in the last paragraph of R.D. draft at page 53 ante that the remission shall be granted until the full sanctioned assessment is reached or until the period of guarantee if it is less than 30 years, expires. The following revised draft of the rule is therfore for consideration :-

"19HH. When the revosed assessment on any survey number or sub-division thereof determined either under rule 19H or other wise exceeds the existing assessment levied on it by more than 25 per cent. in cases falling under sub-sections(4 and (5) of section

117F of the Code, such excess shall be recovered by stages of 25 per cent. every two years. that is to say commencing with the year next following the year in which the settlement is introduced, the recovery of excess shall be subject to the limit of 25 percent. over the existing assessement for the first two years, 50 per cent. for the next two years and so on there being added to the limit an increase of 25 percent. for every subsequent two years during the ~~para~~ period of the settlement."

3. The law governing the recovery of land revenue in Inam villages, i.e. by the superior holder from his inferior holders, is contained in Chapter VII of the Code. Chapter XI of the Code to which the proposed rule is relatable is not included in section 216 as one of the chapters applicable to survey settled alienated villages. The proposed rule will therefore govern recovery in Inam villages in so far only as it enters into any section of Chapter VII, the rule will not operate propio vigore in Inam villages. The scheme of Chapter VII shows that in order to give effect to the proposed rule in Inam villages for the benefit of the inferior holders, recourse must be had to section 84-A of the Code, Section 84-A firstly provides for the issue by the Collector (acting under Government orders) of orders remitting rent or land revenue recoverable by the superior holder not exceeding double the amount of the remissions given by Government from any cause whatever : secondly it directs refusal of assistance to an Inamdar for the recovery of the rent or land revnoue (not being crop share) so remitted, and thirdly the section saves the right of inferior holders to sue the superior holder for refund of any excess recovered despite the remission so ordered. It is thus only indirectly i.e. throggh the orders issued by the collector under section 84-A that the rule can be geven effect to in Inam villages. A on page 20 may also be a useful means of bringing pressure to get unwilling Inamdars to observe the proposed rule.m

Id/- P.N.H.
dt/- 26/7/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5133, dated the 27th July 1943.

VVK. 17/7/56/ 5C.

Office of the R.L.A.

A revised draft notification is sent herewith.

2. Amendment No. (i) in the R.D. draft at pages 35-40 ante seeks to insert a provision in clause (d' of rule 43(1) of the Land Revenue Rules to the effect that the provisions of rule 86 shall as far as may be apply to the levy of assessment fixed under the rule and rule 47. But as pointed out in R.L.A.'s opinions Nos. 5991, dated 23rd July 1942 and 9149 , dated 13th November 1942., with which the Advocate General has agreed (see U.R. to R.D. No. 4715, dated 7th July 1943) the rule 86(a) is not a calid rule, and before any amendment as proposed is made in rule 43, it would be advisable to amend rule 86. Attention is in this connection invited also to R.L.A.'s opinion No. 6979 , dated 27th August 1942.

3. Amendment No. (ii) in the R.D. daraft at page 40 ante provides inter alia for the levy of altered assessment under section 48 in the case of unalienated land which is assessed or held for purposes of agriculture and is subsequently permitted to be used for any purpose unconnected with agriculture. But an amendment of rule 80, so as to extend the scope of therules in Chapter XVV to cases of land permitted to be used for any purpose unconnected with agriculture would not validate rule 86(a). On the contraby the amendment of rule 80 in the manner proposed would itself be ultra vires section 48 of the Bombay Land Revenue Code for the reasons explained in the R.L.A.'s opinions and the Advocate General's opinion referred to above. ~~[illegible]~~ amendment of rule 80 has therefore been deleted from the revised draft.

4. Amendment No. (ii) in the revised draft corresponds to amendment No. (iii) in the R.D. draft.

5. Amemdment No. (iii) in the revised draft corresponds to

amendment No. (iv) in the R.D. draft. Provision (IV) in rule 82 does not appear to be the proper place for shifting the proviso to rule 81(2). Provision (VI) in rule 82 provides for rates for the non-agricultrual assessement leviable on lands in the Bombay Suburban Division. As the proposed proviso restricts the non -agricultural assessment of plots of land not built upon in Development Department's scheme a maximum rate of one rupee per 250 sq. yards or part thereof, provision (VI) in rule 82 would appear to be more appropriate for tagging on the proviso, since Development Department schemes outside the City of Bombay are restricted only to the Bombay Suburban Division, The proviso has accordingly been added to provision (VI) in rule 82."

6. Amendment No. (v) in the R.D. draft amends rule 86(a)(2) so as to make building sites held by Co-operative housing societies which are not built upon liable to non-agricultural assessment three years after the date on which possession of the land was taken or building permission was granted , as the case may be- For thereasons explained inR.L.A.'s opinion No. 6979, dated 27th August 1942, this amendment would not be in order as Government has no power to levy non-agrucultural assessment by mere grant of permission under section 65 of the Land Revenue Code. Draft amendment (v) in R.D. draft has therefore been omitted from the revised draft-

Id/-

P.N.M.

Dt/-

20/7/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5002, dated the 21st July 1943.

VVK. 17/7/56/ SC.

Office of the R.L.A.

A revised draft notification is sent herewith. The proposed addition to rule 139 s is not really in the nature of a proviso to that rule but is a substantive provision in the case of a map of a survey nimber or sub-division of a survey number prepared on the basis of survey by place -table. It has, therefore, been added as a substantive provision to paragraph 1 of rule 139 . There is no need to distrub the existing provisos (a) and (b) to that rule, which would apply even in the case of copies of these maps prepared on the basis of survey by plane table. It is presumed this is intended. The extra fee proposed to be charged for showing the scaled -off perimeter measurements is not in the nature of an exception to article (5) in rule 142(a) It is an additional fee and as such has been provided by an additional article (5A)

Id/- NKD.
dt/-

Remembrancer of Legal Affairs

U.R.to N.D. No. 5964, dated 6th September 1943.

VVK. 17/7/56/
5C.